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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/972,575 | 10/05/2001 | Joseph C. Walsh | P 5.78(a) CVL | 4977 |
| 7590 07/01/2004 | | | EXAMINER | |
| Michael A. Goodwin, Esq. Klaas, Law, O'Meara & Malkin, P.C. Suite 2225 1999 Broadway Denver, CO 80202 | | | MAI, TRI M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3727 | |

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/972,575

Applicant(s)

WALSH ET AL.

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,7-9,11,14-18 and 28-33 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,4,7-9 and 11 is/are allowed.
- 6) ☒ Claim(s) 14-18 and 28-33 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Claim Rejections - 35 USC § 102/103

1. Claims 14-18, and 28-33 are rejected under 35 U.S.C. 103(a) as obvious over Rossi in view of Flemming (2583211).

Rossi teaches a container with a 1st and 2nd walls 30, 17, a lid 37 movably attached to the first wall 30 via a fold line as shown in Fig. 5. Flemming teaches that it is known in the art to provide a disk-like closure with hinges lines 7x as shown in Fig. 5. It would have been obvious to one of ordinary skill in the art to provide a disk-like closure with hinges lines in Rossi as taught by Flemming to enable reengagement easily.

2. Claims 28, 29, 31, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Froom (4431129) or Stone (5314114) in view of Hodapp (3146936). Stone teaches a container with 1st, 2nd, 3rd, and 4th walls, a panel 56 forms in the 4th wall, and the hole at portion 50 to be opened closed with panel 56. Froom teaches a container with 1st, 2nd, 3rd, and 4th walls, a panel forms in the 4th wall, and the hole at portion 21 to be opened closed. Either Stone or Froom meets all claimed limitations except for the lid movably attached to the third wall. Hodapp teaches that it is known in the art to provide the lid movably attached to the third wall as shown in Fig. 2 via hinge 21. It would have been obvious to one of ordinary skill in the art to provide the lid movably attached to the third wall in either Froom or Stone as taught by Hodapp to provide the desired location for the hinge and to hold the container easily.

Please note that the term “flip top lid” does not impart any structure over the lid in Rossi.

3. Claims 14-18, and 28-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Behrmann (5402933). Behrmann teaches a method for open/closing a container having body portion with first and second wall, a lid movably attached to the first wall at 20, a hinge portion

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24 movably attached to the lid, moving the lid in a opening position cause the hinge portion 24 to separate from the second wall, and moving the lid to a closed position and engaging a portion of the hinge portion with the second wall as shown in Fig. 6.

Regarding claim 28, Behrmann teaches a 1st, 2nd, 3rd, and fourth walls, a lid 19 movably attached to the third wall, a panel 24 formed in the fourth wall, and in the closed condition, the panel 24 is engaged with the fourth wall.

Regarding the hole, the hole can be either hole 26 or the hole formed by the boundary of portion 30.

Allowable Subject Matter

4. Claims 1, 2, 4, 7, 8, 9, and 11 are allowed.

Response to Arguments

5. Applicant's arguments filed 03/31/04 have been fully considered but they are not persuasive. With respect to the Froom and Stone references, applicant argues that there is no panel movably attached to the lid. It is noted that the panel 21 is attached to the lid and movably together with the lid. Similarly, panel 56 moves together with the lid in Stone.

6. With respect to the Rossi in view of Flemming combination, applicant argues that there is no motivation to combine the two references. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347,

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21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Fleming clearly teaches the advantage of using the disk-like closure, i.e., the disk-like member is automatically and slightly deformed so that it engage with the wall of the pouring opening when the cap is again closed (col. 1, lines 15-17).

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai
Primary Examiner
Art Unit 3727

